

1 ERIC M. LIEBERMAN
RABINOWITZ, BOUDIN, STANDARD
2 KRINSKY & LIEBERMAN, P.C.
740 Broadway, Fifth Floor
3 New York, New York 10003-9518
(212) 254-1111

4 Attorney for Plaintiff and Intervenor

5 TIMOTHY BOWLES
BOWLES & MOXON
6 6255 Sunset Blvd., Suite 2000
Hollywood, CA 90028
7 (213) 661-4030

8 Attorney for Plaintiff and Cross-Defendant
Church of Scientology of California

9 MICHAEL L. HERTZBERG
10 740 Broadway, Fifth Floor
New York, NY 10003-9518
11 (212) 982-9870

12 Attorney for Intervenor Mary Sue Hubbard

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF LOS ANGELES

16 CHURCH OF SCIENTOLOGY OF CALIFORNIA,)
Plaintiff,)

17 vs.)

18)
19 GERALD ARMSTRONG, DOES 1 THROUGH)
10, INCLUSIVE)
20 Defendants.)

21 MARY SUE HUBBARD,)
Intervenor.)

22)
23 GERALD ARMSTRONG,)
Cross-Complainant,)

24 vs.)

25 CHURCH OF SCIENTOLOGY OF CALIFORNIA,)
a California corporation, et al.,)
26 Cross-Defendants.)

ORIGINAL FILED
NOV 2 1988
COUNTY CLERK

Case No. C 420 153

PLAINTIFF/INTERVENOR'S
AND CROSS-DEFENDANT'S
OPPOSITION TO
MOTION TO UNSEAL
FILE

27 Date: November 9, 1988
28 Time: 9:00 a.m.
Dept: 56

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION..... 2

II. FACTS..... 2

III. THE ORDER OF THIS COURT TO SEAL THE FILE
WAS AN INDISPENSABLE FACTOR IN ACHIEVING
SETTLEMENT AND SHOULD NOT BE DISTURBED..... 4

IV. THIS COURT'S ORDER SEALING PRIVILEGED
DOCUMENTS HAS BEEN UPHELD BY TWO FEDERAL
COURTS AND SHOULD NOT BE REVERSED..... 5

V. CORYDON HAS NOT MADE AN ADEQUATE SHOWING
OF NEED WHICH WOULD JUSTIFY REVERSAL OF
THIS COURT'S PRIOR SEALING ORDERS..... 6

 A. Moving Party Has No Need for Access to
 the File for Collateral Estoppel Purposes... 6

 B. Moving Party Has Made No Showing That the
 Materials Sought Will Help Establish Any
 Fact in His Own Litigation..... 7

VI. ATTEMPTED JOINDER PAPERS FROM OTHER LITIGANTS
SHOULD BE STRICKEN AS UNTIMELY..... 8

VII. CONCLUSION..... 12

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CASES

PAGES

Champion v. Superior Court
(1988) ___ Cal.App.3d ___, 247 Cal.Rptr. 624..... 4,12

Fisher v. Superior Court for Los Angeles County
(1980) 103 Cal.App.3d 434, 163 Cal.Rptr. 47..... 4

Ford v. Superior Court
(1987) 118 Cal.App.3d 737, 233 Cal.Rptr. 607..... 5

Lynch v. Glass
(1975) 44 Cal.App.3d 943, 119 Cal.Rptr. 139..... 7

Montana v. U.S.
(1979) 440 U.S. 147, 99 S.Ct. 970, 59 L.Ed.2d 210.... 7

O'Connor v. Donaldson
(1975) 422 U.S. 563, 95 S.Ct. 2486, 45 L.Ed.2d 396... 3

Phelps v. Kozakar
(1983) 146 Cal.App.3d 1078, 194 Cal.Rptr. 872..... 4

Porten v. University of San Francisco
(1976) 64 Cal.App.3d 825, 134 Cal.Rptr. 839..... 11

San Bernardino Unified Sch. D. v. Superior Court
(1987) 190 Cal.App.3d 233, 235 Cal.Rptr. 356..... 5

United States v. Zolin
(9th Cir. 1988) 809 F.2d 1411, order for en banc review
vacated (9th Cir. 1988) 842 F.2d 1135..... 3,5,6

OTHER AUTHORITY

PAGES

Code of Civil Procedure section 387..... 10

I.

INTRODUCTION

1
2
3 Plaintiff/cross-defendant Church of Scientology of
4 California ("CSC") and intervenor Mary Sue Hubbard oppose
5 non-party Bent Corydon's Motion to Unseal File in this case
6 ("Motion"). First, Corydon has no standing to bring such a
7 motion as he is not a party and has not sought to intervene in
8 the case (Code of Civil Procedure section 387). Further, Mr.
9 Corydon has not shown any compelling reason for dissolving the
10 seal on the Court's file established as an indispensable element
11 of the December 1986 settlement of the parties nor for
12 dissolving the seal previously established in this case for the
13 confidentiality of privileged exhibits.

II.

FACTS

14
15 The original lawsuit in this action was brought in 1982 by
16 CSC to recover private documents stolen by defendant Gerald
17 Armstrong ("Armstrong"). Mrs. Hubbard intervened in the case
18 in November, 1982 to protect her privacy interests in the
19 documents. Armstrong filed a countersuit in September, 1982, an
20 action which was bifurcated from the original suit in June,
21 1983. Judge Breckenridge, now retired, presided over the trial
22 court proceedings beginning in April, 1984 (Bowles Declaration,
23 para. 2).

24 The original suit was tried before Judge Breckenridge
25 without a jury in May, 1984. In a June 20, 1984 Memorandum of
26 Intended Decision ("Decision"), Judge Breckenridge found that
27 the defendant Armstrong had converted the documents at issue and
28

1 invaded Mrs. Hubbard's rights to privacy. Along with
2 maintaining a seal on private papers that had been deposited
3 with the Court at the outset of litigation, the Decision sealed
4 a number of exhibits from the public view on privilege grounds.
5 This sealing has been upheld in separate federal
6 litigation.^{1/} While the Decision opened other exhibits to
7 public inspection, a series of appeals and separate civil rights
8 actions effectively kept these papers under seal as well until
9 December 1986 when they were returned to the plaintiff by order
10 of the Court (Bowles Declaration, paras. 3 & 4).

11 After lengthy negotiations, the parties presented Judge
12 Breckenridge on December 11, 1986 with a settlement of
13 Armstrong's countersuit. An integral, indispensable part of
14 that settlement was the sealing of the Court's record and the
15 stolen documents held by the Court (see Exhibit A, transcript
16 of December 11, 1986 hearing, reporter's transcript ("RT")
17 1 - 3). That aspect of the settlement was documented in the
18 Stipulated Sealing Order executed and entered by Judge
19 Breckenridge on December 11, 1986:

20 "The entire remaining record of this case, save only
21 this order, the order of dismissal of the case, and
22 any orders necessary to effectuate this order and
the order of dismissal, are agreed to be placed
under the seal of the Court."

23 1. See United States v. Zolin (9th Cir. 1988) 809 F.2d
24 1411, 1413-1414, 1417-1419; order for en banc hearing vacated
25 (9th Cir. 1988) 842 F.2d 1135. On October 17, 1988, the
26 Supreme Court of the United States granted certiorari on the
27 issue of sealing these documents (57 U.S.L.W. 3274). Oral
28 argument is expected sometime in spring or fall, 1989. Unless
and until the U.S. Supreme Court reverses any finding of
privilege, the Ninth Circuit decision is the law of the case.
O'Connor v. Donaldson (1975) 422 U.S. 563, 577 fn 12, 95
S.Ct. 2486, 45 L.Ed.2d 396.

1 (Exhibit B, paragraph 2).^{2/} The countersuit was dismissed
2 with prejudice by Judge Breckenridge on that same day, December
3 11, 1986 (Exhibit C).^{3/}
4

5 III.

6 THE ORDER OF THIS COURT TO SEAL THE FILE WAS
7 AN INDISPENSABLE FACTOR IN ACHIEVING SETTLEMENT
8 AND SHOULD NOT BE DISTURBED

9 The attached transcript of the December 11, 1986 hearing
10 makes it clear that the sealing of the Court's record in this
11 case, protecting the privacy of all litigants involved, was
12 an integral and indispensable part of the final resolution of
13 defendant's counterclaims at the trial level (Exhibit A).
14 Unsealing this file will allow a non-party to unravel arduous
15 negotiations which ended with a settlement satisfactory to both
16 sides (Exhibit A, RT 1 - 3). Such an action would be in direct
17 violation of the policy of California's courts to encourage and
18 uphold the pre-trial resolution of disputes (Phelps v.
19 Kozakar (1983) 146 Cal.App.3d 1078, 1082, 194 Cal.Rptr. 872;
20 Fisher v. Superior Court for Los Angeles County (1980) 103
21 Cal.App.3d 434, 437, 440-441, 163 Cal.Rptr. 47. Further, the
22 protection of privacy is a compelling justification for the
23 establishment and maintenance of court sealing orders.
Champion v. Superior Court (1988) ___ Cal.App.3d ___, 247

24 2. Moving party's citation to Judge Breckenridge's grant
25 of partial access to exhibits (Motion, paras. 5 and 6) is
irrelevant, having been superseded by the December 11, 1988
sealing order and settlement of defendant's claims.

26 3. Since the settlement and sealing of the record, John G.
27 Peterson, CSC's signatory counsel on the settlement, died on
28 July 28, 1987. Judge Breckenridge retired from the bench on May
31, 1988.

1 Cal.Rptr. 624, 629.^{4/} Corydon's motion should be denied on
2 this basis alone.

3 IV.

4 THIS COURT'S ORDER SEALING PRIVILEGED DOCUMENTS
5 HAS BEEN UPHELD BY TWO FEDERAL COURTS
6 AND SHOULD NOT BE REVERSED

7 In addition to the December 11, 1986 sealing order, a
8 number of documents in the Court's file are also sealed as
9 privileged by Judge Breckenridge's 1984 Decision (see Ford v.
10 Superior Court (1987) 118 Cal.App.3d 737, 740, 233 Cal.Rptr.
11 607, 608, fn 1, para. 3(b)). In subsequent litigation with the
12 United States government to decide the issue of the production
13 of these documents to federal agencies, both the U.S. District
14 Court, Central District of California and the U.S. Court of
15 Appeals for the Ninth Circuit have held that these documents
16 should not be disclosed (United States v. Zolin, supra 809
17 F.2d at 1413 - 1414, 1417 - 1419).

18 The status quo should also be maintained with regard to
19 this pre-settlement sealing order. Without any legal or factual
20 showing on the issues of privilege, Mr. Corydon cannot expect
21 this Court to reverse a decision made by the trial judge after
22 benefit of full presentation of the facts (San Bernardino
23 Unified Sch. D. v. Superior Court (1987) 190 Cal.App.3d 233,
24 240-241, 235 Cal.Rptr. 356). Moreover, Corydon has demonstrated
25 no basis for this Court to undermine the Ninth Circuit's final

26 4. Moving party cites Penal Code section 1203.45 in
27 support of opening up the file in this case (Motion, para. 5).
28 The statute is irrelevant. Section 1203.45(f) deals solely with
the unsealing of criminal misdemeanor records in defamation
cases, not at issue herein.

1 determination of the privilege issue in Zolin (see footnote 1,
2 supra).

3 v.

4 CORYDON HAS NOT MADE AN ADEQUATE SHOWING OF NEED WHICH
5 WOULD JUSTIFY REVERSAL OF THIS COURT'S PRIOR SEALING ORDERS .

6 Moving party's counsel represents Corydon in the matters of
7 Jentzsch v. Corydon, California Superior Court, Los Angeles
8 County No. NVC 14274 and Carmichael v. Corydon, California
9 Superior Court, Riverside County No. 189414, Judicial Council
10 Coordination Proceeding No. 2151 ("Jentzsch/Carmichael")
11 (see Motion, para. 2). Those coordinated matters concern
12 defamatory statements made by Corydon against plaintiffs, both
13 ministers in the Church of Scientology, in various radio
14 broadcasts in August, 1987. Corydon has raised the defenses of
15 truth and opinion in both cases (Bowles Declaration, para. 8).

16 Corydon claims in the Motion that he needs access to the
17 sealed files in this instant case in order to establish his
18 truth defense against Reverend Jentzsch and to corroborate
19 claims make by declarant Vicki Aznaran. In particular, Corydon
20 seeks (i) a certified copy of Judge Breckenridge's factual
21 findings made at the conclusion of the 1984 trial (see
22 "Memorandum of Intended Decision," attached as Exhibit A to the
23 Motion), and (ii) general access to the exhibits and the court
24 file in the case (Motion, paras. 7 - 10, Morantz Declaration,
25 paras. 3, 5).

26 A. Moving Party Has No Need for Access to the File for
27 Collateral Estoppel Purposes: Corydon claims he needs to
28 unseal this record in order to establish collateral estoppel in

1 his own litigation, in particular through a certified copy of
2 Judge Breckenridge's June 20, 1984 Memorandum of Intended
3 Decision ("Decision"). However, Corydon cannot establish
4 collateral estoppel in his litigation through the instant case.
5 The plaintiffs in Jentzsch/Carmichael and the parties in
6 Armstrong are neither the same nor in privity, nor are the
7 issues identical in these cases (Montana v. U.S. (1979) 440
8 U.S. 147, 153, 99 S.Ct. 970, 59 L.Ed.2d 210; Lynch v. Glass
9 (1975) 44 Cal.App.3d 943, 947, 119 Cal.Rptr. 139).

10 B. Moving Party Has Made No Showing That the
11 Materials Sought Will Help Establish Any Fact in His Own
12 Litigation: In addition to the claimed need for access to the
13 Court file for collateral estoppel purposes, moving party claims
14 he needs access to the pleadings and exhibits in order (1) to
15 establish the falsity of Reverend Jentzsch's purported comments
16 on a BBC broadcast (Motion, para. 9) and (2) to establish a
17 purported practice of destruction of documents (Motion, para.
18 10). Both rationales are without merit.

19 (1) Reverend Jentzsch's Purported Comments: Corydon has
20 attached an unauthenticated excerpt from a purported BBC
21 interview of Reverend Jentzsch (Exhibit B to the Motion).
22 Moving party claims that Jentzsch stated that Judge
23 Breckenridge's Decision was "Nazi influenced" (Motion, para.
24 9). Even assuming the quote in Exhibit B is accurate, it states
25 only that Judge Breckenridge's criticisms of the Churches of
26 Scientology contained in the Decision were similar to those made
27 by a former SS officer. To allow access to the file in order to
28 determine if Judge Breckenridge was influenced by Nazis is

1 patently absurd. Corydon has failed to show how such
2 determination would have any relevance to issues in his own
3 litigation. Moreover, Corydon has never directly inquired of
4 Reverend Jentsch his basis for the purported statement (Bowles
5 Declaration, para. 8).

6 (2) Purported Destruction of Documents: Moving party has
7 attached to the Motion an unauthenticated copy of a declaration
8 by a Vicki Aznaran describing her actions relative to the
9 removal of papers from various files. Corydon claims he needs
10 access to the court record in this case in order to confirm such
11 claims of Aznaran (Motion, para. 10). Yet Aznaran's claims of
12 destruction make no reference to Jentsch or Carmichael and
13 Corydon has not otherwise made such a connection. There is no
14 evidence, let alone a claim, presented in the Motion that either
15 Reverend Jentsch or Carmichael have withheld or done away with
16 documents requested produced in the Jentsch/Carmichael
17 litigation.

18 In short, Corydon has made no demonstration of need which
19 outweighs the policy considerations of privacy and the upholding
20 of pretrial settlements which currently hold the various seals
21 on the files in place. As such, the Motion should be denied.

22 VI.

23 ATTEMPTED JOINDER PAPERS FROM OTHER LITIGANTS
SHOULD BE STRICKEN AS UNTIMELY

24 On October 28, 1988, plaintiff's current counsel was
25 indirectly notified of the filing that day of a "Joinder in
26 Motion to Unseal File" along with a supporting declaration of
27 counsel Toby L. Plevin seeking a further order to unseal the
28

1 Armstrong file on behalf of seven individuals and entities
2 ("joinder parties"), various litigants in Church of
3 Scientology, Mission of Riverside, et al. v. Corydon, et al.
4 and related cases, California Superior Court, Riverside County
5 No. 154129 ("Church v. Corydon") and Corydon v. Church of
6 Scientology International, et al. California Superior Court,
7 Los Angeles County No. 694401 (Bowles Declaration, para.
8 7).^{5/}

9 Law Departments Policy Manual section 111 dictates that the
10 joinder pleading be stricken:

11 "Joinders in motions which have the effect of
12 seeking an order in favor of the joining party, as
13 distinguished from mere expression of support, are
14 treated the same as motions made by the joining
15 party. Thus, the joining party must comply with all
16 notice requirements per CCP Sections 1005 and 1013,
17 as though it had filed the motion itself, and it may
18 not rely on the fact that the moving party gave
19 adequate notice with the filing of the original and
20 underlying motion."

21 The joinder and its supporting Plevin Declaration,
22 adding additional bases for access to the file on behalf of new
23 parties, must have been filed and served no later than October
24 25, 1988, 15 days prior to the November 9, 1988 hearing date
25 (Code of Civil Procedure section 1005).

26 Even if it had been timely filed, the joinder motion would
27 have to be denied on its merits as "joinder parties" have
28 failed to demonstrate any more compelling basis for dissolving
the sealing orders than Corydon's counsel in Jentzsch/

5. The proof of service indicates that moving party failed
to serve any of the current counsel of record in this case. It
was only by relay of the motion by attorney Lawrence Heller to
current counsel for plaintiffs/intervenor that CSC and Mrs.
Hubbard had any notice at all of this pending matter (Bowles
Declaration, para. 6).

1 Carmichael.

2 First, as with Corydon in Jentzsch/Carmichael the joinder
3 parties are not parties to this Armstrong litigation nor have
4 they sought to intervene in this case (Code of Civil Procedure
5 section 387).

6 Second, the joinder seeks a certified copy of the Decision,
7 an action rendered unnecessary by the lack of collateral
8 estoppel effect of the Decision (see Section V(A), supra).

9 Third, the joinder and the Plevin Declaration variously
10 claim that a search of the entire Armstrong file for evidence
11 of "fair game," Scientology's religious status and the formation
12 of Scientology Missions International is "essential," "crucial,"
13 and "important." (Plevin Declaration, paras. 4 - 7.) Yet they
14 have given no specific reference to any portion of the
15 Armstrong record that would pertain to these topics, nor have
16 they provided any showing of necessity of access. At the same
17 time they filed this joinder, said parties have claimed in their
18 own case that there is no further need to conduct discovery on
19 either side (Bowles Declaration, para. 9).

20 Moreover, these parties have admitted in several depositions
21 and declarations in Church v. Corydon that they searched and
22 obtained documents from the Armstrong file prior to imposition
23 of the sealing orders at issue herein. (Bowles Declaration,
24 para. 10 and attached Exhibits D, E and F.) In fact, Mary
25 Corydon testified that joinder parties already have possession
26 of all Armstrong exhibits:

27 Q. Okay. What documents did you view that you
28 understood were from the Armstrong case?

1 A. I can't remember, specifically. There were so many
of them.

2 Q. How many were there?

3 A. A pile.

4 Q. How tall a pile?

5 A. Like that, I suppose.

6 Q. The witness is showing -- what? -- about eight
7 inches off the top of the table?

8 A. Yeah, there was a box of them.

9 Q. Eight and a half by eleven?

10 A. I imagine, I think so.

11 Q. And these were -- what? -- all exhibits in the
Armstrong case?

12 A. Yes

13 Q. Do you know who obtained them?

14 A. I think they were public record. I'm not sure.

15 Q. Do you know who [from your group] obtained them?

16 A. Bent, I think.

17 Exhibit D, RT 510-511.^{6/}

18 As such, joinder parties' characterizations of access to
19 this now sealed file as "essential," etc. are disingenuous.
20 They have made no showing of need that would outweigh the
21 significant privacy interests inherent in the current sealing
22 orders that are held by the Armstrong litigants (Porten v.
23 University of San Francisco (1976) 64 Cal.App.3d 825, 828,
24 829, 134 Cal.Rptr. 839).

25 _____
26 6. Joinder parties' obtaining this bankers box of exhibits
27 may well have been in violation of this Court's various sealing
28 orders (Bowles Declaration, paras. 3, 4 and 5; Exhibits A, B,
C).

VII.

CONCLUSION

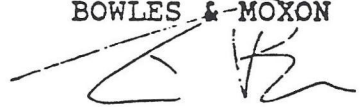
1
2
3 Moving party has failed to demonstrate any compelling
4 reason, let alone a rational basis, for unsealing the files in
5 this case. Such files were sealed by order of Judge
6 Breckenridge as an integral part of settlement between the
7 parties. Such settlement was preceded by Judge Breckenridge's
8 sealing of certain exhibits in the file as privileged, a holding
9 that has been confirmed in separate litigation by the Ninth
10 Circuit. Such seals should remain in place to protect the
11 privacy rights of the litigants. Champion v. Superior Court,
12 (1988) ___ Cal.App.3d ___, 247 Cal.Rptr. 624, 629.

13 Dated: November 2, 1988

Respectfully submitted,

14 ERIC M. LIEBERMAN
15 RABINOWITZ, BOUDIN, STANDARD
16 KRINSKY & LIEBERMAN, P.C.
17 Attorney for Plaintiff
18 and Intervenor

BOWLES & MOXON

19 
20 Timothy Bowles
21 Attorney for Plaintiff and
22 Cross-Defendant Church
23 of Scientology California

24 Michael L. Hertzberg
25 Attorney for Intervenor
26 Mary Sue Hubbard
27
28